in which a corporation is domiciled may impose a succession tax.[7] It has recently been held that in determining the title to stock, its *situs* is considered to be in the state in which the corporation in which it is a right or interest, is domiciled.[8] It, therefore, seems that the *situs* of the stock is not in Tennessee, even though the certificates are held there. Thus the Tennessee court could not render a valid decree *in rem* concerning the corporation stock.

Under the "full faith and credit" clause of the Federal Constitution, whenever a judgment of a state court is relied upon in another state as conclusive, the jurisdiction of the court rendering it is open to inquiry, and if it appears that the court had no jurisdiction the judgment is not entitled to receive full faith and credit.[9]

The Kentucky court, therefore, had power to inquire into the jurisdiction of the Tennessee tribunal. Having found that the Tennessee court had no power to render the decree concerning the stock, the Kentucky court, having jurisdiction of both parties, proceeded to decide that Baker's domicile had been in Kentucky and that the property should be distributed according to Kentucky law.

Following the view that the *situs* of the stock in the Kentucky corporation is to be regarded as in Kentucky, the instant case seems to be entirely correct in allowing the Kentucky law to govern the distribution of the corporation stock.

F. L. McC.

THE DUE PROCESS AND FULL FAITH AND CREDIT CLAUSES AS APPLIED TO THE CONFLICT OF LAWS

The case of *Kryger v. Wilson*,[1] recently decided by the Supreme Court of the United States, presents an interesting problem in the applicability of the due process clause[2] and the full faith and

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[7] *Matter of Bronson* (1896) 150 N. Y. 1; *Greves v. Shaw* (1899) 173 Mass. 205.

[8] *Holmes v. Camp* (1916) 219 N. Y. 359, 114 N. E. 841, and note thereon in 17 COL. L. REV. 151.

[9] *Borden v. Fitch* (1818) 15 Johns. (N. Y.) 121, 143, 144; *Thompson v. Whitman* (1873) 18 Wall. (U. S.) 457.

[1] (1916) 37 Sup. Ct. Rep. 34.

[2] Amend, xvi, sec. 1: "No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law."

credit clause[3] of the Federal Constitution to the conflict of laws. Vendor and vendee, both residents of the state of Minnesota, entered into a contract for the sale of land situated in North Dakota. The contract was executed in Minnesota, and payment in instalments was to be made there. No money was paid by the vendee at the time the contract was executed. Both Minnesota and North Dakota had statutory methods of foreclosure by which the vendor, through cancellation proceedings, could extinguish the contract claim of the vendee. The vendee having defaulted in the making of payments, the vendor employed the method of foreclosure prescribed by the North Dakota statute,[4] which provided that a vendor in a contract for the sale of land may not cancel and terminate the same upon default, except after written notice to the vendee, giving him at least thirty days in which to make good his nonperformance. In accordance with the further provision of the statute, the vendor gave vendee notice only by publication in the county in which the land was situated. In a suit to quiet title, brought by the assignee of the vendor, it was held by the North Dakota trial court that the discharge of the contract was governed by the North Dakota law and that it had been fully discharged by the cancellation proceedings. On appeal to the Supreme Court of North Dakota, the vendee claiming a denial of due process of law, the decree of the trial court was affirmed.[5] The vendee then appealed to the Supreme Court of the United States on the ground that the state courts had deprived him of property without due process of law, in holding that the cancellation proceedings of the vendor in North Dakota, of which he had had no actual notice, had discharged the contract. The court held that since the non-resident vendee had appeared in the suit to quiet title, the North Dakota court had jurisdiction, and a mere mistake, if any, in applying the wrong rule of conflict of laws as to the discharge of the contract, that the *lex situs* governed rather than the rule of law of the place of making and performance, did not deprive him of due process of law as guaranteed by the Federal Constitution.

In the examination of the questions involved in the case, we shall consider: (1) Whether, in general, there can be a denial of due process of law under the Constitution merely as a result

[3] Art. iv, sec. 1: "Full faith and credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State."

[4] N. D. Rev. Codes, 1905, chap. 30, art. 3, pp. 7494-7497.

[5] *Wilson v. Kryger* (1914) 29 N. D. 28.

of error on the part of the totality of state courts; (2) whether, more specifically, an error by the state courts in determining a question in the conflict of laws—namely, what rule of law is applicable to the discharge of a contract—constitutes a denial of due process of law. Apart from these two considerations dealt with by the case itself, we shall consider (3) the possible application of the full faith and credit clause of the Constitution in the event of a refusal by the North Dakota courts to recognize the applicability of the Minnesota statute to determine the discharge of the contract entered into and to be performed in the latter state.

It has become well established that a mere error in a decision, whether of law or of fact, in a civil or in a criminal case is not a denial of due process of law.[6] Thus the decision of a state court involving nothing more than the ownership of property, with all the parties in interest before it, cannot be regarded by the unsuccessful party as a deprivation of property without due process of law simply because its effect is to deny his claim to own such property.[7] Due process of law does not assure to a taxpayer the interpretation of state legislation by the executive officers of a state as against its interpretation by the courts of the state.[8] When an act admitted to be valid has been misconstrued by the court, due process of law has not been violated.[9] Mere error in the administration of a law by a state board is equally regarded as not constituting a denial of due process of law.[10] But an error in the administration of a state law may be so gross,[11] a decision may be so fraudulent,[12] or a tribunal may

[6] *Patterson v. Colorado* (1907) 205 U. S. 454. Holmes, J., said: "In general the decision of a court upon a question of law, however wrong, and however contrary to previous decisions, is not an infraction of the 14th Amend., merely because it is wrong or because earlier decisions are reversed."

[7] *Tracy v. Ginzburg* (1906) 205 U. S. 170. Harlan, J., said: "Under the opposite view every judgment of a state court involving merely the ownership of property could be brought here for review—a result not to be thought of."

[8] *Thompson v. Kentucky* (1907) 209 U. S. 340.

[9] *Central Land Co. v. Laidley* (1895) 157 U. S. 103; *Penn. R. Co. v. Hughes* (1903) 191 U. S. 477.

[10] *Chicago B. & Q. Ry. Co. v. Babcock* (1906) 204 U. S. 585 (error committed by an administrative board).

[11] See H. Schofield, Federal Supreme Court and State Law, 3 ILL. L. REV. 195; *Lent v. Tilson* (1890) 140 U. S. 316.

[12] On what constitutes fraud as to administrative board, see *Ross v. Stewart* (1913) 227 U. S. 530, 539.

be so incompetent,[13] as to constitute a denial of due process of law. In the principal case there was no such fraudulent conduct or gross error in the administration of a state law as to constitute a denial of due process within these well-recognized exceptions.

When the suit to quiet title was instituted in North Dakota, the court held that while the contract was entered into in Minnesota between parties residing in that state and was to be perfomed in Minnesota, the *lex situs* nevertheless governed; that the procedure as to the cancellation of the contract related to the remedy and not to the substantive law governing the relations of the parties. We may well doubt the correctness of this reasoning. The secondary obligation of a contract is so intimately connected with the primary obligation, that convenience and logic require that one set of rules be applied throughout to determine the nature, extent, and discharge of both the primary and secondary obligations, whether that single set of rules be the *lex loci contractus* or the *lex loci solutionis,* according as the former or the latter may govern the primary obligations.[14] Here the North Dakota court clearly departed from that principle by subjecting the vendee to the liability imposed upon him by its statute as to cancellation rather than the duties and liabilities that were intended by the *lex loci contractus,* the Minnesota statute.[15]

[13] See *dicta* in *Jordan v. Massachusetts* (1912) 225 U. S. 167, 176.

[14] Story, *Conflict of Laws,* sec. 331 *ff; Pritchard v. Norton* (1882) 106 U. S. 124; *Gibbs v. Société Industrielle* (1890) 25 Q. B. D. 399. Lord Esher, M. R., said: "The general rule as to the law which governs a contract is that the law of the country, either where the contract is made, or where it is to be so performed as to be considered a contract of that country, is the law which governs such a contract, not merely with regards to its construction, *but also with regard to all the conditions applicable to it as a contract.*" (The italics are the writer's.) *Cf. New York & Cuba Mail S. S. Co. v. Maldonado & Co.* (1915) 225 Fed. 353, Rogers, J., dissenting, correctly asserts that the same law should govern throughout, "(1) as to the primary obligation of the contract, (2) as to the secondary obligation of the contract, (3) and as to the discharge of the secondary obligation." See comment on this case, 25 YALE LAW JOURNAL, 147. In accord see Professor Wesley N. Hohfeld, Individual Liability of Stockholders and the Conflict of Laws (1909) 9 COL. L. REV. 492, especially p. 497, note 11. *Contra,* see J. H. Beale, *Cases on the Conflict of Laws,* vol. iii, sec. 97 (summary).

[15] *Walsh v. Selover, Bates & Co.* (1909) 109 Minn. 136; affirmed in *Selover, Bates & Co. v. Walsh* (1912) 226 U. S. 112. See also *Polson v. Stewart* (1896) 167 Mass. 211; *True v. Northern Pacific R. Co.* (1914) 126 Minn. 72.

Of course, the principle that the *lex loci contractus* should govern throughout is not altered by the existence of a so-called "equitable interest" in the North Dakota land: the rights, privileges and powers of the vendee against third persons who take the land with notice of the existence of the Minnesota contract would be determined according to the *lex situs*.[16]

The Federal Supreme Court held that the error, if any, that may have been committed by the North Dakota court in determining the question of conflict of laws did not constitute a denial of due process of law. This is in line with the very few authorities to be found in support of that specific problem. It has been held that where the case turns upon the construction and operation of the statute of another state and not its validity, a decision of that problem does not necessarily involve a question of a federal character.[17] In the case of *Allen v. Alleghany Co.*[18] the plaintiff, a business corporation created by the laws of North Carolina, had not complied with certain statutory requirement of New York and Pennsylvania, where it had applied for the privilege of doing business. In a suit brought in New Jersey upon a promissory note made in New York, it was held that the plaintiff could enforce the note obligation. When the statute of a state does not declare the contract to be expressly void, the tendency of judicial decisions is toward a strict construction in maintaining its validity. Upon appeal to the Federal Supreme Court, it was held that there was no federal question involved.

While the doctrine of the *lex situs* has been well established in questions of conflict of laws as to property,[19] and the doctrine that the *lex loci delicti* determines both the primary and secondary rights, has been quite generally followed as to torts,[20] there has

[16] *Mallette v. Carpenter* (1916) 160 N. W. (Wis.) 182; *Fall v. Easton* (1909) 215 U. S. 1. See The Effect as Against the Original Defendant and his Transferees, to be given by the Law of the Situs to a Foreign Decree ordering the Conveyance of Realty, (1917) 26 YALE LAW JOURNAL, 311.

[17] *Johnson v. New York Life Ins. Co.* (1902) 187 U. S. 490; *Glenn v. Garth* (1892) 147 U. S. 360; *Lloyd v. Matthews* (1894) 155 U. S. 222; *In re Converse* (1890) 137 U. S. 624.

[18] (1904) 196 U. S. 458.

[19] *Green v. Van Buskirk* (1868) 7 Wall. (U. S.) 339.

[20] *Western Union Telegraph Co. v. Brown* (1914) 234 U. S. 542. The plaintiff sued to recover damages for mental anguish suffered as a result of defendant's negligent failure to deliver, in Washington, D. C., a telegram sent from South Carolina. In an opinion rendered by Mr. Justice Holmes it was held that the South Carolina statute, which made mental

been much confusion and variance among state authorities as to the rule of law applicable to contracts. It is quite improbable, however, although conceivable, that the United States Supreme Court would consider an error on the part of a state court in the application of the wrong rule of conflict of laws as to property or as to torts, a denial of due process of law. Federal uniformity, in questions relating to the proper interpretation and discharge of contractual obligations, is peculiarly desirable. Yet the existing confusion among state authorities makes it clearly more improbable that the Federal Supreme Court will regard an error committed by a state court in the wrongful application of the conflict of laws as to contracts, a denial of due process of law.[21]

The losing side in the principal case did not allege, as a fact, the Minnesota statute, as it was at the time the contract was executed. It is conceivable that the vendee might have pleaded the Minnesota statute in the North Dakota action, and urged upon appeal to the United States Supreme Court, that the North Dakota court failed to give full faith and credit to the Minnesota statute. The appellant failed to set up a possible contention based on the full faith and credit clause.

That the conclusiveness of judgments of a sister state does not depend on mere comity but on constitutional and statutory guarantees, has become well established.[22] It cannot, however, be thought established, and has not been established, as yet, that statutes, considered as "public acts," of one state, are necessarily to be given equally comprehensive effect in another state.[23] A

anguish a cause of action when the tort occurred outside the state, was an infringement upon the exclusiveness of the control of the United States over the District of Columbia.

[21] See *Allen v. Alleghany Co., supra; cf. Finney v. Guy* (1902) 189 U. S. 335.

[22] *Mills v. Duryea* (1813) 7 Cranch (U. S.) 481. See History of Art. iv, sec. 1 of the Constitution, by George P. Costigan, Jr., 4 COL. L. REV. 470.

[23] There are three possibilities in which the statutes of another state may be involved: (1) Misconstruction of the statute of another state; held not to be a denial of full faith and credit. *Banholzer v. New York Life Ins. Co.* (1900) 178 U. S. 402. (2) Denial of the validity of the statute of another state; held to be a failure to give full faith and credit, by *dicta* in *Johnson v. New York Life Ins. Co., supra; Eastern Building & Loan Assn. v. Williamson* (1903) 189 U. S. 122. (3) Determination that the statute of another state is inapplicable; suggested to be a violation of the full faith and credit clause, by expressions used in *Supreme Council of the Royal Arcanum v. Green* (1915) 237 U. S. 531.

possible significant extension of the full faith and credit clause, along the lines last indicated, was suggested by the *reasoning* of Mr. Chief Justice White in the comparatively recent case of *The Supreme Council of Royal Arcanum v. Green.*[24] Had the vendee in the principal case pleaded the Minnesota statute in the North Dakota action, and set up the interpretation given it by the Minnesota courts, he might have raised again the interesting problem of the applicability of the full faith and credit clause to all statutes.[25]

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[24] (1915) 237 U. S. 531. The defendant appealed to the Supreme Court of the United States, claiming that the New York court violated Art. iv, sec. 1 of the Federal Constitution. The court, Mr. Chief Justice White rendering the opinion, reversed the judgment of the New York Court of Appeals, on the ground that it had failed to give full faith and credit to the Massachusetts judgment involved in the case, and apparently, though somewhat ambiguously, on the further ground that full faith and credit had been denied the Massachusetts charter of the corporation and the laws of that state to determine the powers of the corporation involved and the rights and duties of its members." For a discussion of this case see "Conflict of Laws and Full Faith and Credit" (1916) 26 YALE LAW JOURNAL, 324.

[25] Had the action in the North Dakota courts been between the original vendor and vendee the latter might conceivably have taken a position in conformity with the following suggested additional possibilities:

(1) A denial of due process of law by the North Dakota "legislative arm," as such, where a North Dakota statute would *per se* be a violation of due process of law. *Cf. Pinney v. Nelson* (1901) 183 U. S. 144.

(2) A denial of due process of law by the North Dakota statute as in excess of its "legislative power" under the Constitution. See *Western Union Telegraph Co. v. Brown* (1914) 234 U. S. 542.